

**UNITED STATES COURT OF APPEALS**  
**FOR THE TENTH CIRCUIT**

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**SEP 8 2004**

**PATRICK FISHER**  
Clerk

DENNIS LEON SMITH,

Plaintiff-Appellant,

v.

GARTH L. NIESCHBURG; LARRY  
PORTER; WILLIAM MICHAEL  
PORTER; MARK P. MANUEL;  
JOHN AND JANE DOE,

Defendants-Appellees.

No. 03-1499  
(D.C. No. 03-D-112 (PAC))  
(D. Colo.)

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**ORDER AND JUDGMENT \***

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Before **McCONNELL** , **HOLLOWAY** , and **PORFILIO** , Circuit Judges.

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After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

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\* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Plaintiff Dennis Leon, Smith,<sup>1</sup> proceeding pro se, filed what he described as a mandamus action directed at defendants involved with the adjudication of his various traffic violations. The case was assigned to a magistrate judge who recommended all claims against all defendants be dismissed. The magistrate judge's recommendation, adopted by the district court, warned plaintiff, "[f]ailure to make timely objections to the magistrate judge's recommendation may result in a waiver of the right to appeal from a judgment of the district court based on the findings and recommendations of the magistrate judge." R. Doc. 22 at 9. Plaintiff failed to object to the magistrate judge's recommendation and has thus waived appellate review of both the factual and legal determinations of the district court. *Key Energy Res. Inc. v. Merrill (In re Key Energy Res. Inc.)*, 230 F.3d 1197, 1199-1200 (10th Cir. 2000). The interests of justice exception to this waiver rule is not applicable here. *See id.* at 1200.

This appeal is DISMISSED. The mandate shall issue forthwith.

Entered for the Court

John C. Porfilio  
Circuit Judge

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<sup>1</sup> In the documents he filed with this court, plaintiff inserts a comma in his name between "Leon" and "Smith." For purposes of this order and judgment, we shall do the same.